

2018 IL App (1st) 170722-U

No. 1-17-0722

Order filed May 18, 2018

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JAFAR KALBASSI,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 M1 142489
)	
PAUL NOVAK, NOVAK & DELEON LLC,)	Honorable
)	Eve M. Reilly,
Defendant-Appellee.)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed for lack of appellate jurisdiction, where plaintiff failed to file a timely notice of appeal or a timely motion for late notice of appeal.
- ¶ 2 Plaintiff Jafar Kalbassi appeals, *pro se*, from a March 8, 2017, trial court order dismissing, for lack of jurisdiction, his posttrial motion to enforce judgment against his attorney, defendant Paul Novak. We dismiss for lack of appellate jurisdiction because plaintiff failed to file a timely notice of appeal or a timely motion for a late notice of appeal.

¶ 3 The record at bar, which does not include a report of proceedings, shows that, on July 30, 2013, plaintiff filed a complaint against Novak in small claims court. In the complaint, plaintiff alleged that Novak entered into an agreement to represent plaintiff, received payment, then refused to fully refund plaintiff for services not rendered. The trial court dismissed plaintiff's complaint for want of prosecution (DWP) on September 10, 2013. On October 7, 2013, apparently unaware of the previous DWP order, the trial court granted Novak's motion to transfer the case to Lake County. Plaintiff filed a motion to reconsider the change of venue and the court denied the motion. Plaintiff appealed the denial and, on June 30, 2014, this court dismissed plaintiff's appeal for lack of jurisdiction. See *Kalbassi v. Novak & Deleon*, 2014 IL App (1st) 133273-U.

¶ 4 On October 8, 2014, plaintiff returned to the trial court and the DWP order was vacated and the matter was set for trial. On November 24, 2014, Novak withdrew his motion to transfer venue and the matter was set for a December 12, 2014, trial date. On that date, with Novak in court and plaintiff not present, the trial court issued a DWP order. On April 24, 2015, the DWP order was vacated and the matter was set for trial once more. On June 12, 2015, the matter proceeded to trial and, at the close of plaintiff's case, the trial court granted Novak's motion for a directed finding. On June 30, 2015, the trial court denied plaintiff's initial posttrial motion. Subsequently, plaintiff filed a series of posttrial motions that were dismissed by the trial court for lack of jurisdiction based on the June 30, 2015, order. On September 27, 2016, the trial court entered an order striking the matter off call.

¶ 5 On September 30, 2016, plaintiff filed a *pro se* notice of appeal from the trial court's September 27, 2016, order (case number 16-2613). On May 8, 2017, this court issued a DWP

order based on plaintiff's failure to file a timely record on appeal. In the meantime, plaintiff filed two additional posttrial motions in the trial court, requesting the court to enforce judgment against Novak. On March 8, 2017, the trial court entered an order dismissing the case for lack of jurisdiction. Plaintiff then filed a second *pro se* notice of appeal on March 17, 2017, from the trial court's March 8, 2017, order (case number 17-0722).

¶ 6 In this court, plaintiff has filed a common law record without a report of proceedings and a *pro se* appellate brief. Although no brief was filed by defendant in response to this appeal, we may consider the issue raised pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 7 This court has an independent duty to consider whether or not it has jurisdiction to hear an appeal. *Daewoo International v. Monteiro*, 2014 IL App (1st) 140573, ¶ 72; see also *People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009) (subject matter jurisdiction is a threshold issue and "courts of review have an independent duty to consider [their own subject matter] jurisdiction"). Our supreme court has stated that the ascertainment of a court's own jurisdiction is one of the "most important tasks of an appellate court panel when beginning the review of a case." *People v. Smith*, 228 Ill. 2d 95, 106 (2008); *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009) ("A reviewing court must ascertain its jurisdiction before proceeding in a cause of action").

¶ 8 Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) provides that "[e]very final judgment of a circuit court in a civil case is appealable." "An order is final and thus appealable if it either terminates the litigation between the parties on the merits or disposes of the rights of the parties,

either on the entire controversy or a separate branch thereof.” *Bankfinancial, FSB v. Tandon*, 2013 IL App (1st) 113152, ¶ 18 (citing *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 19).

¶ 9 Under Illinois Supreme Court Rule 303(a), the appellant must file a notice of appeal with the clerk of the circuit court within 30 days after entry of the final judgment appealed from, or if a timely postjudgment motion against the judgment has been filed, the appellant must file a notice of appeal within 30 days from the entry of the order disposing of the last postjudgment motion. Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015). The trial court retains its jurisdiction for 30 days after the final judgment has been entered unless a motion challenging the judgment has been timely filed. *Twardowski v. Holiday Hospitality Franchising Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 10 Supreme Court Rule 303(d) gives an appellant an additional 30 days in which to file a notice of appeal, where he has shown a reasonable excuse for his failure to file a timely notice of appeal. Ill. S. Ct. R. 303(d) (eff. Jan. 1, 2015).

¶ 11 Here, plaintiff filed a timely postjudgment motion that was denied on June 30, 2015. As a result—and because plaintiff did not file an extension of time to file a late notice of appeal—his notice of appeal was due on July 30, 2015. However, plaintiff filed his first notice of appeal on September 30, 2016, over a year late. This court dismissed plaintiff’s appeal on our own motion due to plaintiff’s failure to file a timely record. Plaintiff filed a second notice of appeal on March 17, 2017, almost two years after the denial of his initial postjudgment motion. Under these circumstances, plaintiff has failed to comply with the timing requirements of Rule 303.

¶ 12 It has been held that compliance with Rules 303(a) and 303(d) is mandatory and jurisdictional. *Gaynor v. Walsh*, 219 Ill. App. 3d 996, 1004 (1991) (finding that the appellate

court lacked the power to grant a motion for leave to file a late notice of appeal after the time for filing such a motion had expired). Our supreme court requires strict compliance with its rules governing the time limits for filing a notice of appeal and neither a circuit court, nor an appellate court has the authority to excuse compliance with the filing requirements mandated by Supreme Court Rules. *Dus v. Provena Saint Mary's Hospital*, 2012 IL App (3d) 091064, ¶ 10. When an appeal is not timely filed under Supreme Court Rules, the appellate court has no discretion to take any action other than dismissing that appeal. *People v. Lyles*, 217 Ill. 2d 210, 217 (2005). Accordingly, we conclude that we lack jurisdiction over defendant's untimely appeal.

¶ 13 For the reasons stated, we dismiss plaintiff's appeal for lack of jurisdiction.

¶ 14 Appeal dismissed.